THE DECALOGUE JOURNAL

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ISRAEL - A Record of Achievements

What are Israel's achievements which have exerted so potent an influence upon the thought and the writing of our age? Israel's achievement is the people of Israel—six hundred and fifty thousand when our independence was proclaimed on that awe inspiring and perilous morning nine years ago; and now, in the tenth year of independence, to pass the two million mark. This is a people that grows not only in its numerical strength, but also in all the elements of its national cohesion, its discipline and its cultural identity. Israel's achievement is the culture of Israel, a culture charged with the virtues both of age and youth; reaching back in continuous lineage to the revelations of Hebrew Prophecy — and yet harnessed with full ardor of spirit to the mysterious potentialities of the atomic age. Israel's achievement is Israel's democracy, a solitary citadel of free institutions in a region where liberty has few other bulwarks.

Israel's achievement is her physical survival against the most savage, vengeful and relentless hatred by which any people has ever been surrounded.

As the tenth year comes to its end, the image of Israel's future emerges only dimly across the future path. Much depends on whether our neighbors will cease to surround us with the relentless hostility which has marked their attitude throughout every day and month of our first decade. We believe that this is a hostility which they can well afford to renounce. Look at the great pageant of Arab emancipation which has gone parallel with the revival of our small country on its little notch of soil. Twelve Arab countries in which fifty million Arabs live in independence on a rich and abundant area of four million square miles—this is the great triumph and victory of Arab nationalism in our day. Five new Arab sovereignties have completed their freedom during the very decade within which Israel has consolidated her freedom in her little land. Is the world asking too much if it requires of that people in its huge patrimony that it live in peace with a little neighbor established in an area one four-hundredth of its size?

. . . This enterprise of reviving Israel's nationhood is not a matter for a small generation. This is a great drama conceived in majestic terms and acted in the sight of eternity. If we play our parts worthily in its unfolding course, all future generations will rise up and call our memory blessed.

ABBA EBAN,
Israel Ambassador to the United States

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OFFICERS OF

The Decalogue Society of Lawyers

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IN THIS ISSUE

The Editor will be glad to receive contributions of articles of modest length, from members of The Decalogue Society of Lawyers only, upon subjects of interest to the profession. Communications should be addressed to the Editor, Benjamin Weintroub, 179 West Washington Street, Chicago 2, Illinois.

ANNUAL MEETING AND ELECTION OF OFFICERS

The following candidates for offices have been chosen by the nominating committee to stand for election at our annual meeting, the evening of May 28th, at the Chicago Bar Association quarters, 29 South LaSalle Street.

President	Financial Secretary
Alec E. Weinrob	Judge Irving Landesman
1st Vice President	Treasurer
Meyer Weinberg	Harry H. Malkin
2nd Vice President	Recording Secretary
L. Louis Karton	Michael Levin

The following amendments to the Society's Constitution on the recommendation of our Board of Managers, will be submitted for approval and adoption:

Amendment

1. All provisions of this Constitution, as amended, pertaining to allocations to the Library Fund and the Foundation Fund are hereby repealed.
2. The Board of Managers may from time to time make allocations to either or both the Foundation Fund and the Decalogue Foundation, Inc. from the funds of the Society.

Amendment

That . . . Section 3 of Article III of the Society's Constitution be amended to read as follows:

All applications shall be acted upon by the Board of Managers. No action shall be taken thereon until at least ten days' notice of the application has been given to all members of the Board of Managers by mail. Objections to applications for membership shall be determined in such manner as the Board of Managers may prescribe. All applicants approved by the Board of Managers shall be enrolled as members.

February 27, 1958.

Mr. Solomon Jesmer, President,
The Decalogue Society of Lawyers,
180 W. Washington St.,
Chicago 2, Illinois.

Dear Mr. Jesmer:—

This is just to thank you again for all the kindness shown me during my visit to Chicago on the 22nd.

I felt honored to receive your award and want you and all those responsible for its presentation to know of my deep gratitude.

With appreciation and every good wish.

Very sincerely yours,

Eleanor Roosevelt.

NINETEEN FIFTY-SEVEN DECALOGUE MERIT AWARD

Enthusiastic approval of The Decalogue Society of Lawyers selection of Mrs. Eleanor Roosevelt as the recipient of its 1957 Award of Merit honor marked the Decalogue annual affair on February 22nd, at the Palmer House. The main floor of the grand ballroom was filled to utmost capacity and many of the late comers were accommodated on the ballroom balcony.

Hundreds of our city's prominent citizens, lawyers, judges, business men prominent in their respective callings, and their families, were in the audience.

President Solomon Jesmer presided. First vice-president Alec E. Weinrob was chairman of the arrangements committee.

Member Judge Abraham L. Marovitz, speaking in behalf of Mayor of Chicago, Richard J. Daley, who at the time was in Washington, D. C., expressed the city's and his own pleasure with the presence of Mrs. Roosevelt in Chicago. The Judge spoke with great warmth about our guest of honor contributions to the welfare of the United States and entire humanity.

Rabbi Ernst M. Lorge of Temple Beth Israel delivered the invocation. A musical interlude consisting of songs was afforded by member Theodore Fields.

Following are President Solomon Jesmer's message of welcome, Judge Harry M. Fisher's presentation address, and Mrs. Eleanor Roosevelt's response:

Welcome:
—PRESIDENT JESMER

It is a great pleasure to welcome the distinguished audience assembled here this evening to pay homage to a great American, a great member of the human race. Throughout history, from the beginning of time to the present day, man, as the stronger of the sexes, has preempted for himself a position of predominance in every phase of life.

Yet, women in spite of many handicaps placed in their way, we might say from the first day of creation strove to develop and to use their talents for the benefit of mankind. You will perhaps agree with me that the first great woman of the world was Eve, the wife of Adam. In spite of prohibitions and taboos, it was she who was the first to taste and to impart of the tree of knowledge. Eve, we conclude, was the first great woman of the world.

There followed other great women—in biblical times; during the Greek and Roman period, and in modern days. Women played a leading part in the sciences, in the arts, in the professions, in government, in business, in education, as well as in human relations. We shall skip over centuries and millennia and turn to modern times. Among the great women of recent years our attention is drawn to Sylvia Pankhurst, the militant suffragette, who led in the liberation of women from the political shackles imposed upon them. In science, we have Madame Curie, who left an everlasting imprint upon the world. Jane Addams, in our own midst, lived her principles and did much for human welfare, justice and peace. In the literary field I shall mention but Harriet Beecher Stowe, who with the power of her pen shook the conscience of the world.

Today, one of the greatest persons of our land, one of the most beloved leaders of the world, is a woman—our guest of honor.

The name of Eleanor Roosevelt will take place in history side by side with that of her illustrious husband, whose vision, daring and action saved the United States and the world from the designs of a power-mad tyrant and our country from the danger of sanquinary convulsions. Mrs. Roosevelt fully shared then and shares today the ideals and principles which governed these policies and actions.

The name of Eleanor Roosevelt will be perpetuated in history for the same reasons as that of Thomas Jefferson. As a true Jeffersonian, Mrs. Roosevelt has dedicated her life and talents to human dignity, to liberty, to human welfare, to the cause of the common man, to the principles of democracy the world over.

Like Jefferson before her, Eleanor Roosevelt believes that knowledge is the basis of the welfare of mankind; her strong and uncompromising opposition to all forms of tyranny, be they political, military or intellectual, is well known the world over. Mrs. Roosevelt believes in the rule of reason and not in that of force. She believes in human rights, in human freedom.

In some respects Mrs. Roosevelt is even a step or two ahead of Jefferson. Although strongly opposed to the institution of slavery, Jefferson believed that there were essential differences between the two races; and although he thought that the matter required further objective study he felt that, and I quote, "the blacks were originally a distinct race or made distinct by time and circumstances, and inferior to whites in the endowments both of body and mind." Rather an amazing statement coming from

Jefferson. But, as one of Jefferson's biographers stated, it was difficult, indeed, for even a philosopher to rise wholly superior to his environment.

Eleanor Roosevelt's life, her philosophy and actions completely negate such an idea. She not only goes with the time, but, as a leader among men, she is, perhaps, a step or two ahead of her time.

In the name of the Decalogue Society, I salute you, Mrs. Roosevelt, and profoundly thank you for honoring and inspiring us with your presence.

Presentation:
—JUDGE HARRY M. FISHER

May I acknowledge my gratitude to the DECALOGUE SOCIETY OF LAWYERS for assigning me to the very pleasant task of presenting its annual Award of Merit to the lady of their choice?

It would be a delight to act for the Society in any similar function, no matter who the recipient of the Award would be, but when that person is the honored guest of this evening, then the proudest citizen of America should deem it, as I do, a distinction of uncommon magnitude.

Mrs. Roosevelt, we feel richly rewarded by your gracious consent to come here in person to accept our humble Award. Your presence tonight is a demonstration of your unique capacity to judge the worth of men. Without boasting, I assure you there is no identifiable group whose verdict upon the merits of any publicly acclaimed individual is sounder or fundamentally more true than is the verdict of this Society.

Who, other than the heirs of a people which for more than three thousand years has submitted to every diabolical type of persecution, martyrdom and decimation because, stiff-neckedly, it persisted in keeping engraved upon its national soul the fiery words of the Decalogue, can better judge where human merit abides? Who is more competent to detect the individual endowed with the quality of understanding and devotion to the principles of the Decalogue? Who, but a people whose memories are scarred from wounds inflicted by ancient slings and arrows and by contemporary gas chambers and crematoria can better express its love for the dreamer of a world freed from fear—and the dreamer of a universal social order founded upon brotherhood and sustained by justice? And when a fraction of that people is exposed to the benign, soothing and healing climate of America, is it any wonder that they would crave for the opportunity to pour out their love and admiration for the divinely inspired advocate of human rights who is our guest tonight?

I shall not attempt a recital of the virtues of our distinguished guest, of her achievements, of her monumental contributions to the strivings of a disturbed world engaged in an excruciating struggle to save its civilization, to preserve the Constitution of Human Behavior called the Decalogue—or to spread the principles of the Bill of Rights which is the heart of America's Constitution. All this the historians will do. None will be able to write a true history of the epoch which began March 4, 1933, and is not yet ended, without adorning it with the rich hue of her personality.

Her immortal husband who literally vitalized the public welfare concept of the authors of that Constitution and whose governance of our country led it to the most powerful and most respected position in the world, reached the height of his achievements not without, consciously or unconsciously, absorbing the inspiration which emanated from his helpmate. Before his Party nominated him for President, Mrs. Roosevelt was deeply immersed in service to her fellowmen which gave her renown throughout the country. Her influence in civic and humanitarian endeavor overflowed and was felt in regions beyond the borders of her State. When her husband was nominated she became worried over the effect of his election upon the institutions and causes which were so close to her heart. In a conversation with her during the 1932 Campaign she told me that she was deeply concerned over the possibility that her husband's election would compel her to withdraw from certain fields of endeavor where her help and her advocacy were needed. Her modesty prevented her from realizing how great would be the blessing of her broadened interest and influence in wider fields. As we know it now, who can define the limits of Eleanor Roosevelt's influence?

That influence did not, however, stem from the election of her husband. It only gained wider scope of operation. Its force was derived from her deep-rooted idealism, the character of which is of the essence of her being. It is that element of her nature which was baptized in the waters of love for humanity and of longing for a better world order. The substance of her universality is composed of the identical fabric which was the mind and heart of the prophets of old. A kind Providence has vouchsafed her a rich and full life of ever expanding strength and virility. Her dreams are not limited to the wellbeing of a part of the world, of a part of the human family or of any ideological group. They embrace the entire family of man and are born of a craving for peace and for Freedom of the Human Soul. And when she dreams she relentlessly strives for the materialization of them. Toward that end she employs every creative weapon in her vast arsenal of goodness and love. She employs her pen, her speech, her driving force and the example of her personal life. I imagine that at some early period of

her life she made a solemn vow which, to paraphrase an oath sworn by our ancestors of long ago, must have sounded like this:

> If I forget Thee, O, beloved spirit of Justice, let my right hand forget its cunning; let my tongue cleave to the roof of my mouth if I remember Thee not, O, my love for freedom, or set Thee not above my chiefest joy.

Mrs. Roosevelt, we selected you as the person of greatest merit because we love you for all that you exemplify. Our action is in harmony with Jewish conviction that the worthy children of all the people inhabiting the earth will be received into the community of the righteous. You belong no more to any one people or to any one race that you do to any other. You are a child of the world whose First Citizen you are.

Please accept our Award of Merit which we tender as the chiefest joy of our Society, proud of the wisdom which prompted your selection.

MRS. ELEANOR ROOSEVELT: —Response

. . . Last autumn I went to the Soviet Union. I went to try to find out, and to observe, what the country was like today. I realize, of course, that there are innumerable things that I was not able to see in the time that I had, and many things that I probably was quite unable to understand.

I remember very well my conversation with Mr. Nikita Khrushchev at one point. He looked at me and he said, "You are wasting your time." Now, he was not thinking just of me. He was thinking of all of us who believe in democracy and freedom. He was quite convinced.

He said: "You are wasting your time. You have had feudalism, you have had capitalism, you have had a small amount of socialism. The law of the future is communism."

I looked at him and said: "Well, sir, I think that is an opinion, and you are entitled to your opinion, but I am equally entitled to mine. I do not think that we can say that there is any law laid down for us for the way we will develop in the future."

He also, however, said that he felt it was possible for development of different ideas to be peaceful, and he stressed the fact that he believed it was impossible to have war. Now, of course, the basis of that belief is what all the scientists have told us, that our power today of destruction is so great that if our intelligence does not prevent our going to war, we are able to destroy our civilization. Now, the scientists also tell us that we are able from the very same sources of knowledge to do an enormous amount for the good of human beings, and it is our choice.

I was encouraged that even Mr. Khrushchev would acknowledge that war was probably not a possibility. But that did not fool me into believing that he had given up his intention of working for the ends which he wishes to achieve, and I do not think that the objective has ever changed.

The Communist Party believes that there must be a Communist world, and as far as I could see the way to do it had changed. They were quite ready to go about this in a different way since force would result in as much harm to them as it would be to anybody else.

What are the ways that they could attain their objective? I think they are very plain. They are economic, cultural, and spiritual—that is, spiritual for us. They stress the economic and cultural, and they have gone about selling their point of view in a very clever way. And we must accept this challenge and say that this is not a purely military challenge, but it is a challenge to our imagination, our vision, and our courage to meet this challenge in an economic way, a cultural way, and a spiritual way.

Now, I would not suggest that we offer any country the temptation of thinking that there could be one blow, if it was the first surprise blow, that could wipe out all possibility of retaliation. So, I think it must always be made perfectly clear that no one blow could wipe out all retaliation, and that from somewhere there would be a retaliation that would really bring destruction to any aggressor from any part of the world. But that does not mean that it might not be possible through the other challenges to our economic ways, and cultural ways, and spiritual ways, to slowly pick up nation after nation in the uncommitted areas of the world, until the areas left to the free people were so small that they could hardly function.

I have a shrewd suspicion that the Soviets are quite aware of this, and that is what they will try to do. And to me, this is the challenge, and it is a challenge which can be met by peaceful work on both sides. For that reason, I think it is one that we ought to face, we ought to think about, and we ought to accept, because we should be able to find ways of working out our different ideas peacefully . . .

. . . The uncommitted areas of the world which cannot compete and who look upon this military struggle as a struggle between two giants, they are being crushed with all their aspirations and their hopes. And, actually, it is important that we win these uncommitted areas of Asia and Africa. The Soviets have already won a quarter of the world's population in Communist China. We cannot afford to lose the new continent of Africa, for instance, which is just beginning to emerge . . .

. . . The Soviets can barely feed their own people —just barely. We have a surplus of food. We consider it a terrible burden, and we keep trying to keep out of production. I read an editorial recently which said that our farmers should do this and should do that. Well, it strikes me that we should have some kind of imagination when we have the one instrument that could be used . . .

. . . The Soviets know that we do not believe in Communism, that we do not like Communism, but when Mr. Khrushchev said to me, "You hate Communists," he did not mean me personally; he meant my whole nation.

And I said to him, "Oh, no, sir, I do not hate Communists. I hate no people. I dislike Communism and the way you have worked it out because I believe in Democracy, I believe in freedom, I believe in free people making up their own minds to do the things that they want to do that they know are good for them. You believe that people must have certain things that will be good for them, but you believe that you must make them do it.". . .

. . . We have to prove that we here as the showcase for free peoples can do better in letting people —and helping them—do for themselves in freedom the things which will give them a better life, which will give them a happiness that they cannot have with compulsion always over their heads . . .

. . . Yes, we have to prove that, and that is the great challenge that we face today. If we do, I think that somehow we will live and somehow we will find peaceful solutions. But that challenge has to be met. We have to meet it here at home before we can offer the results to the rest of the world . . .

It is our country that gives us the opportunity, and in speaking to you tonight, I hope you will feel as I do that our country and, therefore, every one of us as individuals, has an opportunity to work out a solution in the world today, hard as it may be; and it may be even harder and take longer than any war we have ever fought . . .

I think that you agree in recognizing that we as a country can do things that are good for humanity; we must never give up if we are going to accomplish in the end the results we want in meeting the challenge of our generation . . .

JOSEPH S. GERBER

Member Joseph S. Gerber, Director of Insurance, State of Illinois, addressed our Society on February 28th, at the Covenant Club on "Insurance Administration in Illinois."

The lecture was under the auspices of The Decalogue Legal Education Committee, Albert I. Zemel and John M. Weiner, co-chairmen.

MORE ACCLAIM

The following comments on our choice of Mrs. Eleanor Roosevelt for our Award of Merit for 1957 were received too late for publication in the preceding issue of The Decalogue Journal:

. . . My admiration and affection have grown continually over the forty years I have known Mrs. Roosevelt. I am proud of her friendship and prouder still of the place she has made for herself by her character and courage.

BERNARD M. BARUCH

* * *

. . . A distinguished person, to my mind the greatest and noblest lady of them all in our generation . . .

RABBI LOUIS BINSTOCK,
Temple Sholom, Chicago

* * *

. . . Mrs. Eleanor Roosevelt has attained unique and exalted stature for clear-sightedness, for courage, for humanitarianism, and for the high order of her dedication to democratic ideals . . .

RICHARD J. DALEY,
Mayor, City of Chicago

* * *

. . . As one who has worked all her life for the cause of democracy and general welfare, Mrs. Roosevelt is eminently suited to join the distinguished roster of former recipients.

ABBA EBAN, Israel Ambassador
to the United States

* * *

. . . Her contributions to the cause of democracy and to the general welfare of the American people, and those in other nations as well, are legion. Through the years she has consistently devoted her time and energy to the service and betterment of mankind. No better choice could have been made.

JUDGE OTTO KERNER,
Cook County Court

* * *

. . . I should like to say that I have great regard for Mrs. Roosevelt and for the fine work she has done, and am glad that you have selected such an eminent and worthy person for this award.

JAWHARIAL NEHRU, Prime Minister
and the Minister of Foreign Affairs, India

* * *

. . . Please extend my warm congratulations to your distinguished guest Mrs. Roosevelt as the recipient for this high honor. Kindest regards.

LESTER B. PEARSON
Member Canadian Parliament

* * *

. . . She has been and is a living and active symbol of devotion to the cause of democracy, not only in the United States of America, but also in behalf of troubled peoples in every spot of the earth . . .

DANIEL RYAN, President
Board of Commissioners, Cook County

SAMUEL T. COHEN, PRESIDENT

Member Samuel T. Cohen has been elected president of the Council of Traditional Synagogues of Greater Chicago. The membership of the Council consists of forty houses of worship.

Governor William G. Stratton Addresses Decalogue Society

One of the best attended and popular Forum luncheon meetings of our Society was held on February 7th in the Covenant Club at which the Governor of the State of Illinois William G. Stratton, was the principal speaker. President Solomon Jesmer presided. Member of our Board of Managers, Saul A. Epton, introduced the Governor.

Governor Stratton dwelled in considerable detail on the policies and accomplishments of his administration to date and spoke at some length on several of his proposed measures for the enhancement of public good. Of special interest to the legal profession were the Governor's comments on legal reforms, including the proposed Judicial Article, as follows:

. . . In the Judicial branch of government, we are on the threshold of definite improvement, and certainly one that is sorely needed. This group is perhaps even more aware of the vital need for court reform than is your state administration.

The reapportioned legislature, at my request and urging, passed a new judicial article for amendment to the state constitution, to be ruled upon in referendum this fall. I am certain that everyone here is acquainted with the details, and knows the extensive work which went into drawing an acceptable rewriting of the judicial article.

The battle for its adoption is only beginning, and I urge, even expect, the support of groups such as this in its passage.

Our present judicial article satisfied very well the needs, the demands, of the government in the 1870's when it was established. It has, however, been substantially unchanged since that time, and it is woefully lacking in the light of present day necessity.

The backlog of court cases is a disgrace to a civilization and a government which prides itself as having a basis of mercy and justice. It is a shameful disgrace, and it is ridiculous.

No business, no law firm, if you please, could exist with a framework as slipshod as our present system of court organization. It is true we can muddle through, but each day we delay the right of a person to receive judgment in a law suit is a day of black mark against the system.

Each legal delay that can be blamed on crowded, badly organized courts, is a monument to backwardness in government. We in Illinois are not in a stone age stage of development. We are great. We are a state with tremendous potential and proud heritage. Being that, we can not hang back in needed changes because of some local or selfish interest.

I will have much more to say on this subject before the year is out. Today I want to say only that I expect the legal profession, whether they be . . . law clerks or jurists, to consider well this need from the standpoint of the welfare of all the people.

We can't stand still. We must move forward, meet the challenge of growth, or we will slip backward. An antiquated court system is a blot on the face of all government.

This matter of change, of growth, is one of vital concern to me, as I know it is to you. It is interesting to watch and to meet this challenge as both you and I must do. The opportunity to talk a little about it here this afternoon, has been most pleasant.

I like the prospect of constantly changing conditions—the need to establish policy to meet those conditions. I like the job, just as I know Governor Deneen liked it fifty years ago.

I consider it fortunate that we are here today in a state and nation that is vital, forward-looking, and progressive. Fifty years from today, another governor will discuss with another group the problems he faces. Let us be certain that in that discussion we stand up to the test of having met the problems of 1958.

Judicial Vacancies And Lawyers Of The Jewish Faith

At the direction of our Board of Managers the following telegrams were sent on March 21st to Governor William G. Stratton of Illinois, Edward F. Moore chairman Cook County Central Committee of the Republican Party, and Mayor Richard J. Daley chairman Cook County Central Committee of the Democratic Party.

> We strongly urge that your committee consider the nomination of lawyers of the Jewish Faith to fill the judicial vacancies created by the death of Judge Michael Feinberg and the resignation of Judge Julius H. Miner. Our organization, as the third largest Bar Association in Illinois, is concerned that the group numbering so many distinguished lawyers continue to have adequate representation on the bench. While we disapprove of quotas and the like we do feel that there should not be a diminution in our representation in view of the many highly competent and reputable men and women from our ranks who are available.
>
> The Decalogue Society of Lawyers

CIVIL RIGHTS

The Civic Affairs Committee recently submitted to the Board of Managers a proposal that the Corporation Counsel appoint one assistant who would work full time in the area of civil rights. The proposal has been referred back to the Committee with instructions to report back to the Board after further investigation.

Leonard L. Leon is chairman of The Decalogue Civic Affairs committee.

SUMMARY OF RECENT DECISIONS IN ILLINOIS PROBATE LAW

By NAT M. KAHN

Nat M. Kahn is a member of the Board of Governors of the Illinois State Bar Association and a widely known writer and lecturer on probate law in this state and elsewhere.

NAT M. KAHN

The following Illinois Supreme Court and Illinois Appellate Court cases recently decided and dealing with Illinois Probate Law are of especial impact and significance.

In *Sternberg Dredging Company in Estate of William F. Sternberg,* 10 Ill. 2d 328, 140 N.E. 2d 125, the Supreme Court of Illinois, made it clear that under Section 15 of the Illinois Uniform Partnership Act the liability of partners as to partnership debts is joint and several, and therefore a creditor of the partnership may have his claim allowed in its entirety against the estate of a deceased partner without taking any action against the surviving partners.

In re *Estate of Sneider,* 12 Ill. App. 2d 485, 139 N.E. 2d 863, although an abstract decision of the Appellate Court for the First district, its holding is important. The court held that when no evidence is offered by either party, the survivor is deemed to be the owner of the funds in a joint bank account with the decedent. This decision should eliminate the erroneous contention that under *Link v. Ralston,* 6 Ill. 2d 180, 127 N.E. 2d 445, the survivor of a joint bank account with a decedent has the burden of proving that the decedent intended to make a gift of the funds to the survivor.

In *Macdonald v. La Salle National Bank,* 11 Ill. 2d 122, 142 N.E. 2d 58, the Supreme Court of Illinois indicated that the appointment of a conservator of a person's estate is proper where physical incapacity prevents a person from managing his estate, as specified in Section 112 of the Probate Act of Illinois. This statutory provision was held to be constitutional. The Supreme Court of the United States denied a petition for certiorari to review this holding.

Merchants National Bank v. Weinhold, 12 Ill. App. 2d 209, 138 N.E. 2d 840 (2d Dist.) and *Burnet v. First National Bank of Chicago,* 12 Ill. App. 2d 514, 140 N.E. 2d 362 (1st Dist.) both leaned heavily on *Farkas v. Williams,* 5 Ill. 2d 417, 125 N.E. 2d 600, and in both of these decisions the reviewing courts upheld the validity of inter vivos trusts despite the broad powers of revocation and amendment retained by the settlor even if coupled with rights of management also retained by the settlor.

Supreme Court of Illinois Decisions

Finnerty v. Neary, 9 Ill. 2d 495, 138 N.E. 2d 540. (Will Construction) A life estate under a will without power to the life tenant to dispose of the fee by the life tenant's will was not increased by the testator's codicil. A condition or limitation attaching to a devise in a will attaches to a substitute devise in a codicil, except where the codicil or circumstances show the testator's contrary intention. Separate estates may be created in minerals and devised or conveyed separately as real estate. The word "inherited" has been construed to mean "taken" and sufficiently persuasive to include property taken by devise. Where a testator gives "all interest in the lands devised to me by my mother," that clause will include all she received from her mother either through a will or by intestate succession.

Moore v. Moore, 9 Ill. 2d 556, 138 N.E. 2d 562. (Will Construction) Where a parent furnishes the funds to purchase real estate acquired in her name and in the names of two of her adult children in joint tenancy, a resulting trust does not arise. There is a presumption of a gift from the mother to the children. It is immaterial that the children were adults as they were the objects of the mother's bounty. A child who was not a grantee did not meet his burden to overcome the presumption of gift. A fiduciary relationship does not exist merely because the parties are parent and child.

Schroeder, Exr. v. Benz, 9 Ill. 2d 589, 138 N.E. 2d 496. (Will Construction) A devise to named

brothers and sisters and the named children of a deceased named brother and two strangers was construed per stirpes. Where there is a devise to named persons and the children of another, a per stirpes division is favored in the absence of a contrary intention in the will. A lapsed portion of a residuary gift does not become intestate property but remains as a part of the residuary estate. This is now the statutory rule (See: 1955 and 1957 amendments to Section 49 of the Probate Act).

In re: Estate of Murray, 10 Ill. 2d 230, 139 N.E. 2d 721. (Appeal from Probate) The purported will in this case was held to be a forgery even though the attesting witnesses testified that the testator acknowledged before them that the signature on the document was his. The attesting witnesses were impeached on cross examination and a handwriting expert demonstrated that the purported will and signature thereon were tracings and not in the decedent's handwriting. Proponent's theory that the instrument was written by the decedent with a pencil dipped in ink was rejected when the decedent's check dated the same day as the purported will and other checks of the decedent of different dates did not have any pencil marks.

Brown v. Lochridge, 10 Ill. 2d 254, 139 N.E. 2d 762. (Quiet Title) A will gave the executor the residuary estate with power to sell parts of it from time to time and to distribute the proceeds among the testator's four children. This constituted a direction and continuing power of sale and an equitable conversion took place. The executor had title to the residuary property and the interests of the children were restricted to the proceeds of the sales. The children had no conveyable interest in the property and conveyances by two of them were invalid.

Sternberg Dredging Company v. Estate of Wm. F. Sternberg, 10 Ill. 2d 328, 140 N.E. 2d 125, (Claim in Probate) Since a partnership debt is joint and several under Section 15 of the Illinois Uniform Partnership Act, a creditor of a partnership may have his claim allowed in its entirety against the estate of a deceased partner without taking any action against the surviving partners. The Probate Court has jurisdiction to marshal assets so that creditors of the deceased partner have priority of payment from his individual assets and partnership creditors have priority of payment from partnership assets.

Jerzyk v. Marciniak, 10 Ill. 2d 529, 140 N.E. 2d 692. (Suit to set aside deed) A joint tenancy is not severed by the mere execution of a joint will by the owners of the property. While confidential relationships necessarily exist between a husband and wife when they reside together under the ordinary conditions of marriage, nevertheless it cannot be held as a matter of law that the husband is the dominant and the wife the dependent party. This is a question of fact in each case. Though a man and wife are not married but hold themselves out to be married, the invalidity of the marriage does not prevent them from creating a valid joint tenancy in real estate. (Previously the same point was decided involving a joint bank account in Holmes v. Mims, 1 Ill. 2d 274, 115 N.E. 2d 790).

Knapp v. Hepner, 11 Ill. 2d 96, 142 N.E. 2d 39. (Suit to establish trust) While a constructive express trust in real estate may be established by parol evidence, it is essential that the facts must be established by clear and convincing proof. The plaintiff's claim that he conveyed real estate to the defendant as a gift upon the latter's oral promise to reconvey the property to the plaintiff upon request was not only uncorroborated, but also was impeached by his prior inconsistent statement given at a pre-trial discovery deposition that no agreement was made but was just understood.

Macdonald v. LaSalle National Bank, 11 Ill. 2d 122, 142 N.E. 2d 58. (Probate Court Incompetency Proceedings) The 1937 statute for the appointment of conservators for incompetents (Ill. Rev. State. Chap. 86, par. 53) (similar to present Section 112 of the Probate Act) which defined an incompetent person as one incapable of managing his affairs, whether by reason of mental or physical incapacity, did not violate the due process clauses of either the Federal or Illinois constitutions. ("However, as the wording of Section 112 (present Probate Act) shows, physical incapacity may reach a point where a person is no longer able to manage his person or estate, e.g. where he becomes completely deaf or loses his eyesight and neither relatives nor friends are at hand to assist him." 3 James, Illinois Probate Law and Practice (1951) p. 341).

Weiner v. Severson, 11 Ill. 2d 347, 143 N.E. 2d 225. (Action to terminate and construe trust) Where the sole purpose of a trust is to provide life incomes for two beneficiaries, the trust terminates at the death of both life tenants, in the absence of any provision to the contrary. The trust clearly provided that two other beneficiaries should receive the remainder in equal shares upon the death of the life tenants. Therefore another provision relating to the death of either remainderman "before the termination of this trust and before the distribution thereof" will be construed as if "Termination" and "Distribution" were synonymous and referred to the same time and event. Consequently the interests of both remaindermen became absolute and vested upon the death of the survivor of the two life tenants. The beneficiaries under the will of one remainderman who died before actual distribution acquired one-half of the vested remainder. If the controlling date of the vesting of a remainder would be the date of

actual distribution, then distribution might be indefinitely postponed for many causes and this would lead to possible abuse.

Appellate Court of Illinois Decisions

Vogt v. Vogt, 10 Ill. App. 2d 333, 134 N.E. 2d 816 (Abst.) (1st Dist.) (Leave to appeal denied) (Proceedings for allowance of surviving spouse's award) A post nuptial agreement whereby a wife releases her present and future rights in her husband's property and all other claims arising out of the marital relation did not bar the wife's allowance of her surviving spouse's award as the agreement did not expressly provide for the widow's award rights. An express waiver is required.

Lux v. Lelija, 11 Ill. App. 2d 333, 137 N.E. 2d 280 (Abst.) (2nd Dist.) (Leave to appeal denied) (Partition) A decree of sale in a partition suit failed to establish that the decedent's personal estate was sufficient to pay claims and costs of administration. The decree of sale was not binding upon or effective as to the decedent's estate or its administrator who had not been properly served with summons.

In re. Estate of George, 11 Ill. App. 2d 359, 137 N.E. 2d 555. (2nd Dist.) (Objections to Final Account) An attesting witness to a will was later engaged as attorney for the executor pursuant to the wishes of the testator expressed in the will. The attorney testified to the execution of the will which was admitted to probate. The attorney was barred from compensation for his services as attorney for the executor. He was deemed to be a "beneficiary-witness" who was prevented from receiving any fees because of the provisions of Section 44 of the Probate Act. (Note: This situation has now been corrected by the 1957 amendment to Section 44 of the Probate Act).

Mason, Admr. v. Papadopulos, 12 Ill. App. 2d 140, 138 N.E. 2d 821. (1st Dist.) (Proceedings to enforce attorneys' liens) An administrator of a decedent's estate does not require Probate Court approval to enter into a contract for legal services.

Merchants National Bank v. Weinhold, 12 Ill. App. 2d 209, 138 N.E. 2d 840. (2nd Dist.) (Proceedings to determine validity of an inter vivos trust) The trustee under a revocable amendable inter vivos trust was given the usual powers and duties relating to management and investment but could only exercise a trustee's normal discretionary duties with the written consent of the settlor. The court relied heavily on *Farkas v. Williams,* 5 Ill. 2d 417, 125 N.E. 2d 600, and held that the trust was not a mere agency arrangement but a valid trust so that the named remainder beneficiaries were entitled to a distribution of the trust assets upon the death of the life tenants as provided in the trust agreement.

Sharp v. Kennedy, 12 Ill. App. 2d 353, 139 N.E. 2d 594. (3rd Dist.) (Petition to vacate judgment by confession) Where a party is barred from testifying because of the Dead Man's statute, a child of the disqualified party is a competent witness. The child does not have a direct pecuniary interest in the result of the suit. The weight and credibility of the child's testimony is for the court or jury to decide. (See also: *Boyd v. Boyd,* 163 Ill. 611, 45 N.E. 118: *Hughes v. Mendendorp,* 294 Ill. App. 424, 13 N.E. 2d 840 (3rd Dist.) and *Williams v. Garvin,* 389 Ill. 169, 58 N.E. 2d 870. These cases apparently control contrary holdings in *Campbell v. Campbell,* 368 Ill. 302, 13 N.E. 2d 265 and *Borman v. Oetzelli,* 382 Ill. 110, 46 N.E. 2d 914).

In re. Estate of Sneider, 12 Ill. App. 2d 485, 139 N.E. 2d 863. (1st Dist.) (Abst.) (Citation) This pertained to a joint survivorship bank account. The court held that when no evidence is offered by either party, then the survivor is deemed to be the owner of the funds. Although under Link v. Ralston, 6 Ill. 2d 180, 127 N.E. 2d 445, parol evidence is now admissible to prove that the decedent-owner did not intend that the survivor should own the funds, in the absence of any evidence, a gift of the funds by the decedent-owner to the survivor is presumed.

Burnet v. First National Bank of Chicago, 12 Ill. App. 2d 514, 140 N.E. 2d 362. (1st Dist.) (Action to invalidate inter vivos trusts) (Leave to appeal denied) An inter vivos trust where the settlor reserved a life estate for his benefit and who retained broad powers of revocation, amendment and removal of the corporate trustee is valid and not a fraud on the marital rights of the settlor's wife who accepted benefits of the trust during her husband's life time. (Here again the court relied on *Farkas v. Williams,* 5 Ill. 2d 417, 125 N.E. 2d 600.)

Berkeley Baptist Divinity School v. Campbell, 13 Ill. App. 2d 14, 140 N.E. 2d 532. (3rd Dist.) (Action to compel sale of real estate) A devise of a farm to a trustee directed him to operate it "until such time as in his sole judgment and discretion it can be sold to the best advantage of my estate." This was held to be a power of sale that was not restricted to the original trustee, but it passed to the successor trustee because in any event a sale of the farm was directed by the testator.

Smith v. Estate of Womack, 13 Ill. App. 2d 24, 140 N.E. 2d 529. (3rd Dist.) (Appeal from Probate) Section 330 of the Probate Act as amended in 1955 requires notice for the time when an appeal bond will be presented to the court as a mandatory and jurisdictional condition to the appeal. When no such notice is given the appeal will be dismissed. NOTE: LEAVE TO APPEAL GRANTED AND CAUSE PENDING (October 1, 1957) IN SUPREME COURT OF ILLI-

NOIS, AS DOCKET NO. 34444. Reversed. Notice held to be non-jurisdictional. 12 Ill. 2d 315.

In re. Estate of Albert N. McClallen, deceased, 13 Ill. App. 2d 413, 141 N.E. 2d 883. (3rd Dist.) (Sale of real estate to pay claims) Where it becomes necessary to sell real estate of a testator for the payment of debts, it is the established rule that land passing under a residuary devise must be sold first, and it would be error to decree a sale of land passing under a specific devise before the residuary real estate has been resorted to and exhausted. The pendency of a will contest action does not restrict the power of the probate or county court to proceed with the sale of real estate by the personal representative of a decedent's estate to pay claims and costs of administration.

Rinehart v. Rinehart, 14 Ill. App. 2d 116, 143 N.E. 2d 398. (3rd Dist.) (Declaratory Judgment) A husband and wife, owners of real estate as tenants in common, entered into a written contract to sell the land, and the contract provided for payment thereunder to be made by the buyers to a bank and the bank was directed to deposit the proceeds in a checking account in the name of the husband alone. These directions did not constitute an assignment or gift by the wife to her husband of her one-half interest in the sales proceeds. A gift is never presumed and these directions as to payment and depositing the proceeds do not meet the requirements of a valid gift of (1) an intention to make a gift and (2) the delivery of the subject matter thereof.

JUSTICE HOLMES CELEBRATION on May 14th

The Adult Education Council of Chicago will celebrate on May 14th in the Sherman Hotel, the memory of Justice Oliver Wendell Holmes, Justice of the Supreme Court of the United States from 1902 to 1935. Member Barnet Hodes is general chairman of the affair. Carl Sandburg, famous American poet is honorary chairman. Among many renowned persons who will participate in the event there will also speak, it is expected, a justice of the United States Supreme Court.

Past president Elmer Gertz is in charge of the display of Holmesiana which will be arranged in connection with the celebration at the Chicago Public Library. The exhibits will include books and manuscripts by and about the great jurist.

AUTHOR

Member Herman B. Goldstein, a member on the faculty of the John Marshall Law School, is the author of an article on "Civil Rights and Liberties" in the 1957 year book of the *American Peoples Encyclopedia.*

Applications for Membership

FAVIL DAVID BERNS, *Chairman Membership Committee*
STANLEY STOLLER, *co-chairman*

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Society Honors To Berns And Weinberg

Members Favil David Berns and Meyer Weinberg are The Decalogue Society selectees for the 1957 inter organization awards for outstanding services to the Society the preceding year. Their well earned recognition by our Bar Association will be suitably marked at a ceremony at The Decalogue annual meeting on the evening of May 28th at the Chicago Bar Association quarters, 29 So. La Salle St.

Biographical sketches of the 1957 recipients of the honor follow:

FAVIL DAVID BERNS

Member of our Board of Managers, Favil David Berns was born in Chicago, in 1926.

He is a graduate of Nathaniel Pope Public School and Crane Technical High School. A Bachelor of Science degree in mechanical engineering was bestowed upon him by the Illinois Institute of Technology in 1948.

Berns obtained his L.L.B. degree from John Marshall Law School in 1952 and admitted to the Illinois Bar the same year.

For eight years prior to practicing law Berns was employed by the General American Transportation Corporation, engineering division, at Chicago, Illinois. He is an active member of Congregation B'Nai Zion.

While a member of The Decalogue Society but for a few years, Berns has already distinguished himself as an active participant in many of its activities and he has made an enviable record as chairman of The Decalogue membership committee.

Berns is married and resides with his wife Marcia and one year old daughter Diane, at 3055 Chase Street, Chicago. His law offices are at 134 No. La Salle Street.

MEYER WEINBERG

Second vice-president of our Society Meyer Weinberg was born in Chicago, in 1911.

He was graduated from the Shepard Public School in 1925, from the Crane Technical High School in 1929 and Crane College in 1931 where he was an honor student. He was graduated from DePaul University School of Law in 1934. His admission to the Illinois Bar came the same year. For several years prior to his admission to the Bar and for some years thereafter, Weinberg was gymnastic and calisthenic's instructor at Sears Y.M.C.A.

Weinberg is well known in the legal profession as a writer and lecturer on law. He is the author of the *Illinois Divorce, Separate Maintenance* and *Annulment,* the popularity and usefulness of which had earned the volume a second edition. He is also the author of the 1958 supplement to Frank Keezer's on *Marriage and Divorce in the States and Territories,* and he is the editor of "Matrimonial Law Bulletin" published by the Illinois Bar Association. He has contributed several articles to The Decalogue Journal and has often lectured before our Society.

Weinberg is also active in the American Bar Association and The Chicago Law Institute. Prior to his election as a vice-president Weinberg was a member of our Board of Managers for four years. He is active on several Society's committees.

Weinberg resides with his wife Mollie and sons Richard and Robert at 6037 No. Christiana Ave. His law offices are at 77 W. Washington St.

THE PEDESTRIAN AND THE AUTOMOBILE

CONCERNING THE RIGHT OF WAY*

Excerpts from a recent opinion
By JUSTICE ULYSSES S. SCHWARTZ

. . . It will be noted that the statute (ch. 95½, Par. 171, Ill. Rev. Stat. 1955) not only gives the pedestrian the right of way but provides a definition. It requires the motorist to slow down or *stop, if need be.* The motorist must be prepared to stop. The legislature was cognizant of the great danger to pedestrians from motor vehicle traffic on highways. Edward C. Fisher, Associate Counsel of Northwestern University Traffic Institute, in his treatise on "Right of Way in Traffic Law Enforcement," states that traffic accident records disclose that in urban areas more than half of all traffic fatalities and injuries involve pedestrians. He says, P. 123:

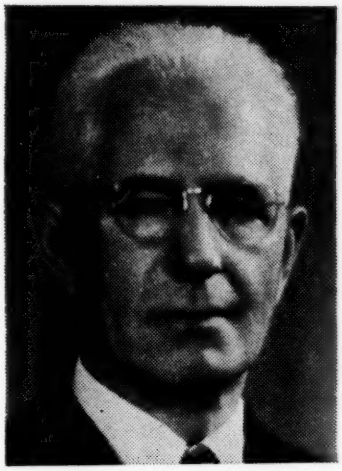
> It is well known, too, that pedestrian accidents occur most frequently at intersections. These considerations should emphasize the importance of pedestrian right of way rules and their enforcement.

Also noted by him is the disparity between the respective capacities of motorist and pedestrian to injure and

> the fact that the impact of the body of a pedestrian upon the vehicle would constitute but slight hazard to the latter, whereas the impact of the vehicle upon the body of a pedestrian is highly likely to result in serious injury or death, and the driver's comparative safety in collisions of this type. . . .

Even prior to the enactment by the legislature of the right of way law, courts had recognized that a higher degree of alertness should be required of the driver of a motor vehicle approaching a place where pedestrians are likely to be crossing the highway. An excellent statement of the reasoning behind the evolvement of this rule is to be found in *Mequet v. Algiers Mfg. Co.*, 147 La. 363, 367, 84 So. 904, 905 (1920) where it is said that while motor vehicles have become a very important and necessary part of the business and social life of the people and are therefore permitted to operate on the public streets, though carrying with them great danger and destruction, yet with respect to pedestrians using crosswalks they have the right to assume that motorists will observe that high degree of care imposed by the circumstances. The court said:

> No other condition is consistent with the common and necessary right to use such avenues of intercourse. The frequent occurrence of collisions and accidents argue most forcefully for a rigid enforcement of all traffic regulations intended to prevent such occurrences. Otherwise, the individual who, through choice or necessity, adopts the original mode of locomotion provided by nature, must take his life and limb in his own hands. We do not mean by this that he is to be excused for failing to use his own senses to avoid being injured; but the greater duty and care rests upon those who use these dangerous agencies carrying such great possibilities of harm.



JUSTICE ULYSSES S. SCHWARTZ

In 1920 the Florida Supreme Court in *Southern Cotton Oil Co. v. L. J. Anderson,* 86 S. 629 (16 ALR 255) held that the driving of an automobile is peculiarly dangerous in its operation and use on the public highways. To support its conclusion it cited statistics gathered by the National Safety Council (a national organization incorporated by Act of Congress, August 13, 1953, and the recognized authority on the promotion of safety on the highways and statistics with respect thereto), showing that in 1918 deaths from automobile accidents totaled 7525. The court quoted the National Safety Council as saying: "The automobile has become the most deadly machine in America." Since the decision of the Florida court hundreds of thousands have been killed and millions injured in automobile accidents. Was the lone Florida court wrong in holding that the automobile is a peculiarly dangerous instrument? The solicitude which the court showed for the pedestrians is sometimes sneered at as "pedestrianism," but the antonyms of pedestrians are manslaughter and maiming. In 1956, 40,000 people were killed in traffic accidents in the United States and 1,400,000 were injured. (Accident Facts 1956 Edition National Safety Council.) Thus, although the population increase since the Florida decision is about 50%, deaths from automobile accidents have increased 500%. In 1956 the number of pedestrians killed was 7950, and the number injured 125,000.

The ratio of pedestrians killed to those injured was 6% plus. The ratio of nonpedestrians (drivers and occupants of motor vehicles) killed to those injured was about 2¼%. Thus, in automobile accidents involving pedestrians, the ratio of fatalities was two and one-half times that of other automobile accidents. Between the years 1952 and 1956, the figures revealed in a tabulation issued by the National Safety Council, May 16, 1957, show that in Detroit, Philadelphia, Baltimore, Chicago, and Cleveland an average of 62% of the fatalities in automobile accidents involved pedestrians. In St. Louis, San Francisco, and Washington, D. C., the figures were higher. A marked reduction appears in the City of Los Angeles, where the figure is 45%, that is, approximately 17% less which if extended throughout the country would have saved hundreds of lives. The reason for the low figure in Los Angeles, not otherwise noted for traffic safety, is attributable to the strict enforcement and interpretation of the right of way statute.

Being at the throttle of an automobile capable of high speed induces a dangerous mood. Impatience, the taking of chances otherwise unthinkable in the ordinary man, and a spirit almost contemptuous of the slow-moving pedestrian often obsesses the driver. There is also to be taken into account a social recklessness which tolerates an ever increasing potential speed for passenger cars that is fantastically and unnecessarily dangerous. The law must counter that mood and habit with a special devotion to those rules that protect the individual "who through choice or necessity adopts the original mode of locomotion provided by nature." The right of way statute is the most important of these rules, and failure to give the instruction on it was serious error.

The error in failing to give the right of way instruction is enhanced by the giving of an instruction known as the "sudden danger" instruction. This instruction told the jury that a person suddenly confronted with a danger is not expected to use the same care which might be used under ordinary circumstances, but only that care which an ordinarily careful person, taking such danger into consideration, might use. This instruction has been held erroneous when applied to a motorist confronted by a pedestrian. *Randal v. Deka,* 10 Ill. App. 2d, 10, 22; *Moore v. Daydif.* 7 Ill. App. 2d 534. It is inconsistent with the principle which we have here again enunciated that a motorist approaching a crosswalk must be on the alert for pedestrians.

There is merit to some of the other errors in instructions as charged by plaintiffs, but they are not of reversible character and on retrial can be readily corrected.

The judgment is reversed and the cause is remanded with directions to grant the motion for new trial and for such further proceedings as are not inconsistent with the views herein expressed.

Judgment reversed and cause remanded with directions.

* Reese vs. Buhle, 47060, Illinois Appellate Court, First Division, decided on December 16, 1957.

JULIUS H. MINER NOW JUDGE OF THE UNITED STATES DISTRICT COURT

Judge Julius H. Miner, charter member of our Society, was appointed by President Eisenhower Judge of the United States District Court, Eastern Division of the Northern District of Illinois. The Judge took office on March 7th. At the time of his appointment, Judge Miner was chief justice of the Circuit Court of Cook County.

He is a lecturer of law at Northwestern University, the University of Chicago, downtown center, and is a faculty member of John Marshall Law School.

The judge is a graduate of Kent College of Law and is the author of several legal texts and theses. Deeply concerned with America's rising divorce rate, he was responsible for the Illinois statute requiring a 60 day "cooling off" period prior to the filing of complaints in divorce and separate maintenance suits.

Judge Miner resides with his wife Judith, daughters Arlene, Leslie, and a son Judson, at 339 W. Fullerton Parkway.

DECALOGUE SOCIETY JOINS CITIZENS OF GREATER CHICAGO

At a recent meeting of our Board of Managers it was voted to apply for membership in the Citizens of Greater Chicago, a city-wide civic body. In accepting our application the Citizens of Greater Chicago wrote:

> . . . The addition of your group to the growing list of member organizations will strengthen our cooperative program for a better city in which to live and work. . . .

STANTON L. EHRLICH

Member Stanton L. Ehrlich is candidate for member at large on the Board of Governors of the Illinois State Bar Association.

Ballots will be mailed to members of the Association through the third week in April.

The Decalogue Society of Lawyers announces with deep regret the death of member Irving G. Zazove on March 7, 1958.

HONOR JUSTICE WALTER V. SCHAEFER

The Decalogue Society of Lawyers in cooperation with The Lawyers Committee for State of Israel Bonds was host on Wednesday October 2, at the Covenant Club, to several hundred members and guests at a testimonial dinner in honor of Walter V. Schaefer, Judge of The Illinois Supreme Court. Senator Hubert H. Humphrey of Minnesota was guest speaker for the occasion. President Solomon Jesmer introduced member Judge Harry M. Fisher who acted as chairman of the affair.

The following, in part, is Judge Schaefer's address:

. . . So much has been said this evening of virtues that I would like to say a few words about shortcomings. In keeping with the spirit of the evening, however, I am going to be highly selective and refrain from discussing any of those many shortcomings of mine that pop so readily into your minds.

The one that I have in mind is one I think I share with many of you. It is a kind of provincialism in legal matters, an intense concentration of interest upon our own legal problems, and a lack of interest in the development of the law in other parts of the world. Our location in the center of a strong and self-sufficient country probably accounts for that attitude. But it is an attitude that all of us should overcome. Indeed it is one that the younger lawyers among us must overcome if they are to perform their role in the days to come. It is a smaller world that we now live in, with intimate cultural, commercial and political ties with places and peoples that were once no more than romantic names in the big geographies we used to study.

I speak with the zeal of a recent convert. Last spring my eyes were opened when I had the opportunity to participate in the first national conference of Turkish lawyers at Ankara. There I felt at first hand the universal quality of law and of legal problems. There I realized the importance of legal institutions in the process of building a nation capable of assuming full stature in today's world.

The problems that confront Turkey are by no means identical with those that face Israel, nor are they being solved in the same way. At a single stroke, back in 1936, Turkey adopted the German Commercial Code, the Italian Criminal Code, and the Swiss Civil Code. Mustapha Kemal, affectionately known as Attaturk, "father of the Turks," consulted the leading scholars of Turkey. They told him that these were the best codes, and overnight they became the law of Turkey.

While the problem of codification confronts Israel's lawyers, there is no likelihood of a comparable solution; nor indeed could Attaturk's feat be repeated in Turkey today, for Turkey has become a real democracy. Always and everywhere, the democratic process means that efficiency is sacrificed for other goals that are more highly prized.

JUSTICE WALTER V. SCHAEFER

The story of Israel's program of gradual codification is quite like the story of codification efforts in this country. Legislative bodies give their time freely to governmental and political problems, but only grudgingly to problems of private law. Particularly is this true in Israel. From the outset, urgent foreign and domestic problems have continuously confronted the new State. Moreover, a parliamentary body like the Knesset probably tends to devote an even higher proportion of its time to political and governmental matters than does an American legislature operating under the doctrine of separation of powers.

There are other factors involved in Israel. English common law and equity became residual sources of law during the thirty years of the British mandate. And with the common law came the doctrine of *stare decisis* and the common law lawyer's attitude toward a statute—a rather tight construction and a reading of the statute in the light of antecedent decisions. The resulting legal climate is by no means ideal for codification.

In addition to those problems that are common to any democratic country with a common-law tradition there is another that is unique in Israel. The job of codification is more than a mechanical one. It involves a choice as to the law that is to be codified. The paramount law of Israel, of course, consists of the statutes adopted since Israel became a state in 1948. Back of that body of law are the ordinances and the orders in council of the mandatory period,

together with decisions rendered under those laws. Underlying that is Ottoman law. In addition, there are Hebrew rabbinic law, Moslem religious law, and Christian religious law, each of them administered by separate religious courts whose decisions are enforced through the civil courts. No simple solution such as that adopted by Turkey is likely in Israel. Instead, the effort has been to follow western legal systems and at the same time to retain as much as possible of that ancient law that gave to the Jewish people their title of lawgivers to the world.

This thumbnail sketch of a single problem serves to illustrate, it seems to me, that there is more in common than we have supposed between the problems that confront the Israeli lawyer and those that confront us. Common law and equity doctrines flourish to a surprising degree—indeed, the entire equitable doctrine of specific performance has been taken over in Israel.

There is, however, one respect in which the situation of the lawyer and the scholar in Israel differs sharply from that which prevails here. Throughout the Middle East there is a scarcity of law books and legal publications. Israel is in a much better position in this respect than is Turkey. But the need is great in Israel. The Chicago Bar Association library has about 100,000 volumes, not counting the 20,000 volumes in the collection of briefs. Last year nearly 14,000 volumes were withdrawn by members of the Association. The last government year-book of Israel that I have seen—for the year 5716—reports that the library of the Ministry of Justice consists of 14,890 volumes. The library of the Supreme Court contains 7,112 volumes. That library serves judges, advocates, and other lawyers. The year book says this:

> "A great deal of legal literature is published in this country. In addition, much of the legal literature published in Britain and elsewhere abroad is of interest to Israel. It could be very useful to judges in their work, but for financial reasons the Courts Administration is unable to supply it to them. Only a very small proportion has been acquired for the libraries of the abovementioned courts. The smaller localities, unfortunately, do not benefit from this facility."

The contrast needs no comment.

I fear that what I have said was well known to most of you before I began. My justification is my own recent and belated conviction of the importance to us as lawyers, and to our country, of an awareness of the legal structures, legal doctrines, and legal problems of the other nations of the world. . . .

JUDGMENT EN BANC **By GEORGES HOFFMANY**

(Courtesy Mr. Alec E. Weinrob)

BOOK REVIEWS

ANATOMY OF A MURDER, by Robert Traver. St. Martin's Press. 437 pp. $4.50.

Reviewed by BERNARD H. SOKOL

To one who reads regularly, there is nothing so pleasurable as the discovery of a good "yarn." This novel is more than good. It is an example of the best kind of storytelling—suspenseful, enthralling, and stimulating. It is the story of preparation for trial of a murder case, in which the reader accompanies defense counsel in his search for evidence, in his interviews with witnesses, in the arguments he has with himself over strategy, in the trepidation he feels as he gets closer to trial. This is a detective story written on an intellectual level.

Paul Biegler is our hero, ten years a small town District Attorney—just defeated for reelection by a younger man. A self-effacing modest bachelor, he does his serious thinking under the open sky with a spinning rod in his hand. To him has come Laura Manion, wife of the man charged with murder. Vibrant and attractive, she seeks a champion for her husband, indicted for the murder of a bully, who, it is claimed, raped her. The prosecutor is, of course, the young man who has just defeated Paul Biegler. He has all the resources of the State at his command. Paul Biegler has little help, particularly from his client, for the Lieutenant is a most unpleasant man. A cynical egotist, with a streak of jealousy that he finds difficult to conceal, he aids his lawyer not at all.

Armed with little else except the zeal to win, Paul Biegler plunges into investigation and preparation for trial, knowing that he must have his work completed within a few weeks. However, he is not completely alone. There is his romantic friend, Parnell McCarthy, the elderly man who is "the great lawyer who might have been," but for his love of drink. McCarthy abstains from liquor for the duration of the trial—for he, too, becomes enamored of their cause, and he and Biegler become partners in arms, bent on seeing justice done.

What is the Lieutenant's fate, and how is the battle fought in the courtroom? Finding out is fun.

Prior to its publication, this book was purchased by the "Book of the Month" club as a novel, dramatized by John Van Druten for presentation in New York as a play, and it has already been sold as a movie. The author, who is a Supreme Court Justice in the State of Michigan, cannot be begrudged this success. He has written a piece of fine distraction.

ATTORNEY FOR THE DAMNED. Edited and with Notes by Arthur Weinberg. Foreword by Justice William O. Douglas. Simon and Schuster. xxiii plus 552 pp. $6.50.

Reviewed by ELMER GERTZ

This book, published at the tail end of the year in which the Clarence Darrow Centenary was marked, is the best single volume by which to remember an American folk figure whose forensic exploits are immortal. Reading it, with the pointed aid of Mr. Weinberg's editorial notes, one may revivify the unkempt, unfettered and soaring philosopher of the courtrooms of many cities in cases dramatic with tragedy and grandeur. Men guilty and guiltless of many high crimes and misdemeanors, men of bold dreams and daring deeds, and men of abysmal depths of degradation, these were the central figures of Darrow's trials during more than half a century of varied legal practice. But he, more than anyone else, was the real hero of these cases. For the most part, the defendants and witnesses and judges and prosecutors live only because Darrow gave meaning to their lives and lusts.

It used to be that one could readily pick up copies of the various Darrow pleas, debates and miscellaneous speeches, published in pamphlets of all sizes and shapes and hues. Latterly, they have become increasingly scarce, as people, even young people, have shown growing awareness of their qualities. The centennial simply intensified this situation. Just as the supply of the offprints was exhausted, this exciting book was published, and it, too, is difficult to keep in print. For the Darrow legend grows.

What is it that gives the Darrow story such validity and cogency even today? The answer is found anew in each plea, reprinted in this book. One may take the Loeb-Leopold plea as not only the most famous but quite typical of the others. In it Darrow outlined the factual situation with the clarity, narrative skill and sense of characterization that mark a good storyteller; giving neither too much nor too little, and being specific and concrete, rather than vague and scattered. Thus the judge knew exactly what the case was about. At the same time, Darrow made the defendants part of a story and a situation that were larger than themselves. He gave meaning to what was meaningless before then. Instead of a senseless, unmotivated crime of peculiar horror, the offense committed by Loeb and Leopold became part of the dark, tangled, tragic jungle in which all youth struggles. Killing them would mean the slaughter of all young people who travel in blindness and despair over roads that are unilluminated and jagged and at a dead-end. One truly feels that Darrow was pleading not only for his clients, but, as he said, for all the young people of the earth, even in the remote future.

Mayor Daley and Chicago's Future

A large audience listened to Mayor Richard J. Daley of Chicago who addressed our Society on Friday, March 7th, at a luncheon meeting in the Covenant Club. The Mayor's subject was "Chicago and its Future." The meeting was held under the auspices of our Forum committee, Bernard E. Epton, chairman.

The Mayor spoke in considerable detail on projects planned and already under way for the improvement and growth of our City. He said that, thus far, during his term in office, the Congress Highway was completed. He praised the industry of the construction forces involved in the job and he stressed his own eagerness to press for action "on every front." He dwelled on his efforts to advance the cause of mass transportation in Chicago and his concern with the problems of the Chicago Transit Authority; of the completion of the Calumet Skyway Toll Bridge, and the Calumet Express Highway; of Chicago, soon to become a great inland port, as part of the St. Lawrence Seaway project. For the legal profession, he said:

> . . . The establishment of Chicago as a world port will open new opportunities and your Society is showing its farsightedness in preparing for this new field in establishing a committee on admiralty law. . . .

He spoke of the expansion of O'Hare Field terminal facilities to "provide for the new requirements of a jet age," of his fight for the clearance of slums, his anxiety to cope successfully with housing problems some of which, he stated, are nearing solution, of his interest in new and better equipped schools, and the work of the City toward solution of race problems, through the Chicago Commission on Human Relations. He said:

> . . . Your Society has contributed directly to this cause and toward preserving and advancing the civil rights of all people—regardless of race, creed or color—and your civic affairs committee has worked directly with the Chicago Commission on Human Relations . . .

And, the Mayor added:

> . . . Your organization is dedicated to the perpetuation of the eternal principles enunciated in the ten commandments handed down by Moses—and these are the basic concepts of human justice, of human dignity, and the foundation of all great faiths. As we go eagerly forward to the fulfilment of Chicago's destiny, let it be these principles that guide our course.

FRANK & WESTON

Attorneys at Law

1335 Lincoln Road
Miami Beach, Florida

(ELIOT R. WESTON *is a member of The Decalogue Society of Lawyers*)

JULIUS RUBEN

33 North LaSalle Street, Chicago
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261 Broadway - New York City
Telephone: Barclay 7-8020, 7-8021
(Member Decalogue Society of Lawyers)

MICHAEL M. ISENBERG
Attorney and Counselor At Law
1412 Ainsley Building
Phone FRanklin 4-5166
Miami, Florida
(Charter Member Decalogue Society of Lawyers)

LIBMAN, KAPLAN and PACKER
Attorneys at Law
92 State Street
Boston 9, Massachusetts
LAfayette 3-5580
(Bernard Kaplan is a member of The Decalogue Society of Lawyers)

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SOCIETY OPPOSES SENATOR JENNER'S COURT BILL

On the recommendation of our legislative committee, Meyer Weinberg, chairman, our Board of Managers at a meeting held on February 21st unanimously approved the following resolution presented by the committee:

The Decalogue Society of Lawyers, the third largest bar association in the State of Illinois, opposes the enactment of Senate Bill 2646, generally known as the Jenner Bill. Introduced by Senator William Jenner of Indiana, hearings on the bill are now held by the Internal Security Sub-committee of the Committee on the Judiciary of the United States Senate.

The proposed bill would withdraw from the United States Supreme Court appellate jurisdiction in cases involving: (1) Congressional investigation committees or contempt of such committees. (2) Federal loyalty security programs. (3) State action on subversive activities. (4) Local rules on alleged subversion among teachers. (5) State regulations for admission to the bar.

Consideration of the constitutionality of this bill aside, we agree with Erwin N. Griswold, author and Dean of the Harvard Law School, when he filed a statement with the sub-committee objecting to its enactment and pointing out that "not everything that is constitutional is wise or desirable."

We likewise strongly concur in Dean Griswold's observations that "The provisions of S. 2646 are clearly punitive in purpose and effect. . . . (and) that we will not have an independent judiciary if the Congress takes jurisdiction away from the Supreme Court wherever the Court decides a case that the Congress does not like."

The jurisdictional scope of the highest court in our country should not be tampered with, trimmed or enlarged at each shift of the political wind. The Congressional exercise of power proposed in the Jenner Bill appears to us to be excessive and unwise and contrary to the essence of our Constitutional structure—an independent judiciary functioning as a coordinate branch of our government.

Finally, we believe that the enactment of S. 2646 would result in a patchwork of conflicting lower court decisions that would remain unresolved for want of a single final arbiter. The confusion and chaos which would result in the courts, as well as amongst litigants and lawyers, would do irreparable damage to the integrity of our judicial system and destroy a uniformity in our laws.

. . . The Decalogue Journal has been an eloquent and articulate medium in alerting the profession to inroads upon the rights of the individual . . .

—Thomas C. Clark, Associate Justice of the United States Supreme Court